Indian Claims Commission

BIGSTONE CREE NATION INQUIRY

Report on: Treaty Land Entitlement

102-02752/

Indian Claims Commission

Commission des revendications des Indiens

March 20, 2000

Chief Melvin Beaver and Council
Bigstone Cree Nation

The Honourable Robert Nault
Minister of Indian Affairs and Northern Development

The Honourable Anne McLellan
Minister of Justice and Attorney General of Canada

Re: Bigstone Cree Nation Treaty Land Entitlement Inquiry

The Bigstone Cree Nation initiated proceedings before this Commission by letter dated April 9, 1996, from the late William S. Grodinsky, on behalf of the Bigstone Cree Nation, to the Indian Claims Commission. On October 13, 1998, Jane Stewart, the then Minister of Indian Affairs and Northern Development, wrote to Chief Melvin Beaver, to advise that the Government of Canada had accepted this treaty land entitlement claim for negotiation.

In view of this acceptance, the Commission has taken no further steps to inquire into the First Nation's claim. Our review of the history of this claim and summary of the events are contained in the attached report, which we are now honoured to present to you.

FOR THE INDIAN CLAIMS COMMISSION

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INDIAN CLAIMS COMMISSION

BIGSTONE CREE NATION INQUIRY
TREATY LAND ENTITLEMENT CLAIM

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PART I

INTRODUCTION

The process that led to the Commission's inquiry into the treaty land entitlement claim of the Bigstone Cree Nation began in July 1989, when a Statement of Claim on behalf of the First Nation was filed with the Department of Indian Affairs and Northern Development (DIAND) under the federal Specific Claims Policy. In its submission the First Nation contended, *inter alia*,

> whereas ... the Government of Canada neglected or failed to act to satisfy the entitlement of the Bigstone Band, there remains outstanding to the Bigstone Band a land entitlement pursuant to the terms of Treaty Eight.[1]

Accordingly, the submission claimed an entitlement to reserve land under Treaty 8 based on the then current population of the Bigstone Cree Nation.[2] A somewhat more detailed Statement of Claim filed in 1991 claimed the same relief.[3]

As early as 1990, the First Nation and Canada invited Alberta to join them in tripartite discussions regarding the claim, and representatives of these three parties held a series of meetings over the next few years. These discussions culminated in the signing of a Memorandum of Intent by negotiators representing the Bigstone Cree Nation, Canada, and Alberta on September 15, 1993. This agreement set out procedures for negotiating the size of the Bigstone treaty land entitlement claim, the land selection, compensation, and other matters that normally arise in treaty land entitlement negotiations; it also set out a schedule that aimed at reaching an agreement in principle for the settlement of the claim by March 31, 1995.[4]

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1 "Statement of Claim for an Unfulfilled Treaty Land Entitlement Claim under Treaty Eight," prepared on behalf of the Bigstone Band by Treaty and Aboriginal Rights Research, July 1989 (ICC Exhibit 3, pt IV).

2 "Statement of Claim for an Unfulfilled Treaty Land Entitlement Claim under Treaty Eight," prepared on behalf of the Bigstone Band by Treaty and Aboriginal Rights Research, July 1989 (ICC Exhibit 3, pt V).

3 "Bigstone Band Specific Land Claim: Treaty Eight Land Entitlement and Related Obligations," prepared on behalf of the Bigstone Band by William Gordinsky, 1991 (ICC Exhibit 5, pt V).

4 Memorandum of Intent by Bigstone Cree Nation, Canada, and Alberta, September 15, 1993 (ICC Exhibit 29).

In early 1994, DIAND officials advised the Bigstone Cree Nation and Alberta that the Department of Justice was expressing doubts as to whether, under the interpretation of guidelines then being used to determine a First Nation's land entitlement under treaty,[5] the Bigstone Cree Nation had a valid treaty land entitlement claim. Representatives of the First Nation and DIAND worked together over the months that followed to prepare a joint submission to the Department of Justice, a process which was completed by June 1994.[6]

In January 1995, officials from DIAND and the Department of Justice advised the Bigstone Cree Nation that, in the government's view, the First Nation had not established the basis for a validation of its treaty land entitlement claim, and the First Nation was invited to provide additional evidence to prove the existence of such a claim. During 1995, the First Nation submitted additional genealogical evidence[7] and legal arguments,[8] but on March 15, 1996, A.J. Gross, Director of Treaty Land Entitlement for DIAND, advised then Bigstone Chief Gordon Auger that

> Canada's position with regard to this TLE claim is that the First Nation has not established, under the Specific Claims Policy, an outstanding lawful obligation owed by Canada. Accordingly, we are unable to accept the claim for negotiation.[9]

On April 9, 1996, the late W.S. Grodinsky,[10] counsel for the Bigstone Cree Nation, wrote the Indian Claims Commission requesting an inquiry into the rejection of the First Nation's claim by the

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5 This issue was encountered by the Commission in the inquiry into the treaty land entitlement claim of the Fort McKay First Nation. See Indian Claims Commission, *Inquiry into the Treaty Land Entitlement Claim of the Fort McKay First Nation* (Ottawa, December 1995), reported (1996) 5 ICCP 3 at 14.

6 Joint Bigstone Cree Nation and DIAND brief for Department of Justice and related correspondence, April 22 to June 6, 1994 (ICC Exhibit 19).

7 Research prepared by Walter Zuk and Louise Zuk for the Band's submission to the Office of Native Claims, March 16, 1995 (ICC Exhibit 21).

8 "Supplementary Brief Submitted to the Department of Justice with Respect to Various Matters Relating to the Treaty Land Entitlement Claim of the Bigstone Cree Band," December 14, 1995 (ICC Exhibit 30).

9 A.J. Gross, Director, Treaty Land Entitlement, DIAND, to Chief Gordon Auger, Bigstone Cree Nation Indian Band, March 15, 1996 (ICC Exhibit 26).

10 Like many others, the Commissioners and staff of the Indian Claims Commission mourn the sudden and unexpected death of Bill Grodinsky in 1998. Mr Grodinsky was not only a great friend to and advocate for First Nations but a man of tremendous dignity and courtesy.

federal government.[11] On April 18, 1996, the Commission agreed to conduct an inquiry, and a planning conference was held on July 25, 1996.

In the course of its inquiry, the Commission received as exhibits the substantial collection of genealogical and historical evidence compiled on behalf of the Bigstone Cree Nation, Canada, and Alberta between 1989 and 1995. The Commission also requested that an additional histor' ıl and genealogical report be undertaken, and more than a dozen additional exhibits were colle d from other sources. In its entirety, the documentation collected by the Commission extends to several linear metres.

At the heart of the Commission's information-gathering process is the mandate to gather evidence from the elders of a First Nation. In the course of the Bigstone inquiry, the Commission held three community sessions. The first, held in Desmarais on October 29, and Trout Lake on October 30, 1996, heard from elders from the existing Bigstone reserves (Wabasca IR 166, see map on page 8). A second, also held at Desmarais on July 3, 1997, heard the evidence of elders from Calling and Chipewyan Lakes. The final community session, held in Peerless Lake on December 9, 1997, heard from elders from Peerless and Trout Lakes.

Final legal arguments by counsel for the Bigstone Cree Nation and Canada were scheduled for the spring of 1998, but were postponed when DIAND advised that the 1996 rejection of the Bigstone claim was being reviewed in light of a change in federal policy regarding the validation of treaty land entitlement claims announced on April 30, 1998.[12] This change in policy was, in part, a response to the recommendations made by the Commission in its report relating to the treaty land entitlement claim of the Fort McKay First Nation.[13] On October 13, 1998, Jane Stewart, the then Minister of Indian Affairs and Northern Development, wrote Bigstone Cree Nation Chief Melvin Beaver to advise that the federal government had accepted the Bigstone treaty land entitlement claim

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11 William S. Grodinsky, Byers Casgrain, to Ron Maurice, Commission Counsel, Indian Claims Commission, April 9, 1996 (ICC Exhibit 31).

12 DIAND, Press Release, April 30, 1998 (reproduced as Appendix A).

13 Indian Claims Commission, *Inquiry into the Treaty Land Entitlement Claim of the Fort McKay First Nation* (Ottawa, December 1995), reported (1996) 5 ICCP 3.

for negotiation.[14] Accordingly, the Commission has suspended its inquiry and will continue to monitor the progress of negotiations regarding the claim. A complete summary of the documentary evidence, transcripts, and the balance of the record in this inquiry is set forth in Appendix B of this report.

Issues

The basic facts of the Bigstone Cree Nation case are not in dispute. Canada conceded that, when reserves were first surveyed for the Bigstone Cree Nation in 1913, insufficient land was provided to satisfy the First Nation's land entitlement under Treaty 8. The parties also agreed that a substantial number of late adherents entered the Bigstone Cree Nation subsequent to this survey and that additional reserve land was set apart for the Bigstone Cree Nation in 1937.

However, the parties differed on the implication of the date-of-first-survey shortfall in 1913, the post-survey adherents to the Bigstone Cree Nation, and the provision of additional reserve land in 1937. The First Nation claimed in its 1989 and 1991 submissions under the Specific Claims Policy that, since it had not been provided with sufficient reserve land for its 1913 population in 1913 or its 1937 population in 1937, it was entitled to a reserve based on its current population. Alternatively, the First Nation asserted that, based on the principles enunciated in the Commission's report on the Fort McKay treaty land entitlement claim, a shortfall existed as a result of Canada's failure to provide sufficient reserve land in 1913 and the large number of post-survey adherents who joined the Bigstone First Nation. Canada took the position that the treaty land entitlement population of the Bigstone Cree Nation crystallized with the first survey of reserves in 1913. Therefore, since the 1913 and 1937 surveys combined to satisfy the treaty land entitlement of the 1913 population of the Bigstone Cree Nation, the obligation to provide reserve land had been satisfied and no additional land was owed to the First Nation for post-survey adherents to the First Nation's population.

The second survey in 1937 introduced an element that the Commission had not been forced to consider in the Fort McKay inquiry. However, the policy change announced in April 1998 and Canada's acceptance of the Bigstone claim for negotiation in October represented an abandonment,

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[14] Jane Stewart, Minister of Indian Affairs and Northern Development, to Chief Melvin Beaver, Bigstone Cree Nation, October 13, 1998.

at least for the purpose of negotiation, of the position taken by Canada before the Commission and, as a result, the Commission was not compelled to consider the issue.

MANDATE OF THE INDIAN CLAIMS COMMISSION

The Commission was established in 1991 to assist First Nations and Canada in the negotiation and fair resolution of specific claims. Order in Council PC 1992-1730 empowers the Commission to inquire into and report on whether or not Canada has properly rejected a specific claim:

> AND WE DO HEREBY advise our Commissioners on the basis of Canada's Specific Claims Policy published in 1982 and subsequent formal amendments or additions as announced by the Minister of Indian Affairs and Northern Development (hereinafter "the Minister"), by considering only those matters at issue when the dispute was initially submitted to the Commission, inquire into and report on:
>
> a) whether a claimant has a valid claim for negotiation under the Policy where that claim has already been rejected by the Minister;[15]

If the Commission had completed the inquiry into the Bigstone Cree Nation treaty land entitlement claim, the Commissioners would have evaluated that claim based on Canada's Specific Claims Policy. DIAND has explained that policy in a booklet entitled *Outstanding Business: A Native Claims Policy – Specific Claims*.[16] In particular, the government says that, when considering specific claims:

> it will recognize claims by Indian bands which disclose an outstanding "lawful obligation," i.e., an obligation derived from the law on the part of the federal government.
>
> A lawful obligation may arise in any of the following circumstances:
>
> i) The non-fulfillment of a treaty or agreement between Indians and the Crown.

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15 Commission issued September 1, 1992, pursuant to Order in Council PC 1992-1730, July 27, 1992, amending the Commission issued to Chief Commissioner Harry S. LaForme on August 21, 1991, pursuant to Order in Council PC 1991-1329, July 15, 1991.

16 DIAND, *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982) [hereafter *Outstanding Business*].

The Commission has the authority to review thoroughly the historical and legal bases for the claim and the reasons for its rejection with the claimant and the government. The *Inquiries Act* gives the Commission wide powers to conduct such an inquiry, to gather information, and even to subpoena evidence if necessary. If, at the end of an inquiry, the Commission concludes that the facts and law support a finding that Canada owes an outstanding lawful obligation to the claimant First Nation, it may recommend to the Minister of Indian Affairs and Northern Development that the claim be accepted for negotiation.

PART II

HISTORICAL BACKGROUND

BIGSTONE CREE NATION IN THE 19TH CENTURY

The concentration of the six existing Bigstone Reserves in the vicinity of North and South Wabasca, Sandy, and Calling Lakes may suggest that the population of the Bigstone Cree Nation is, and has historically been, concentrated solely in these locations. In fact, evidence provided by Bigstone elders, both in community sessions and in previous forums, details longstanding occupation, on at least a seasonal basis, of dozens of lakes and other locations over a massive area of northern Alberta.

Elders spoke not only of traditions they had learned, but also of their personal experiences. Of the six members of the elders' panel who met with the Commission in Desmarais on October 29, 1996, one had been born at Chipewyan Lake, one at Mink Lake, north of Chipewyan Lake, and one at Wadlin Lake,[17] some 250 kilometres north of Wabasca and only 80 kilometres south of Fort Vermilion. Although the events of the past few generations, including the decline in the traditional fur trade economy[18] and the construction of schools at central locations, have resulted in a concentration of the Bigstone Cree Nation, the wide diffusion of its population throughout most of the 19th and 20th centuries has influenced every aspect of the First Nation's past and present.

This diffusion suggests a 19th-century social organization of the people who came to be recognized as the Bigstone Cree Nation that was loose and atomistic. The Commission first encountered such a situation in the inquiry into the treaty land entitlement of the Fort McKay First Nation. In that case, the Commission accepted as accurate the description of traditional Woodland Cree society set out by the late Dr James G.E. Smith, the former curator of North American ethnology for the Museum of the American Indian in New York. Dr Smith's conclusions were as follows:

> [T]he fundamental unit of social organization was the local or hunting band, which consisted of several (two to five) related families which normally comprised ten to

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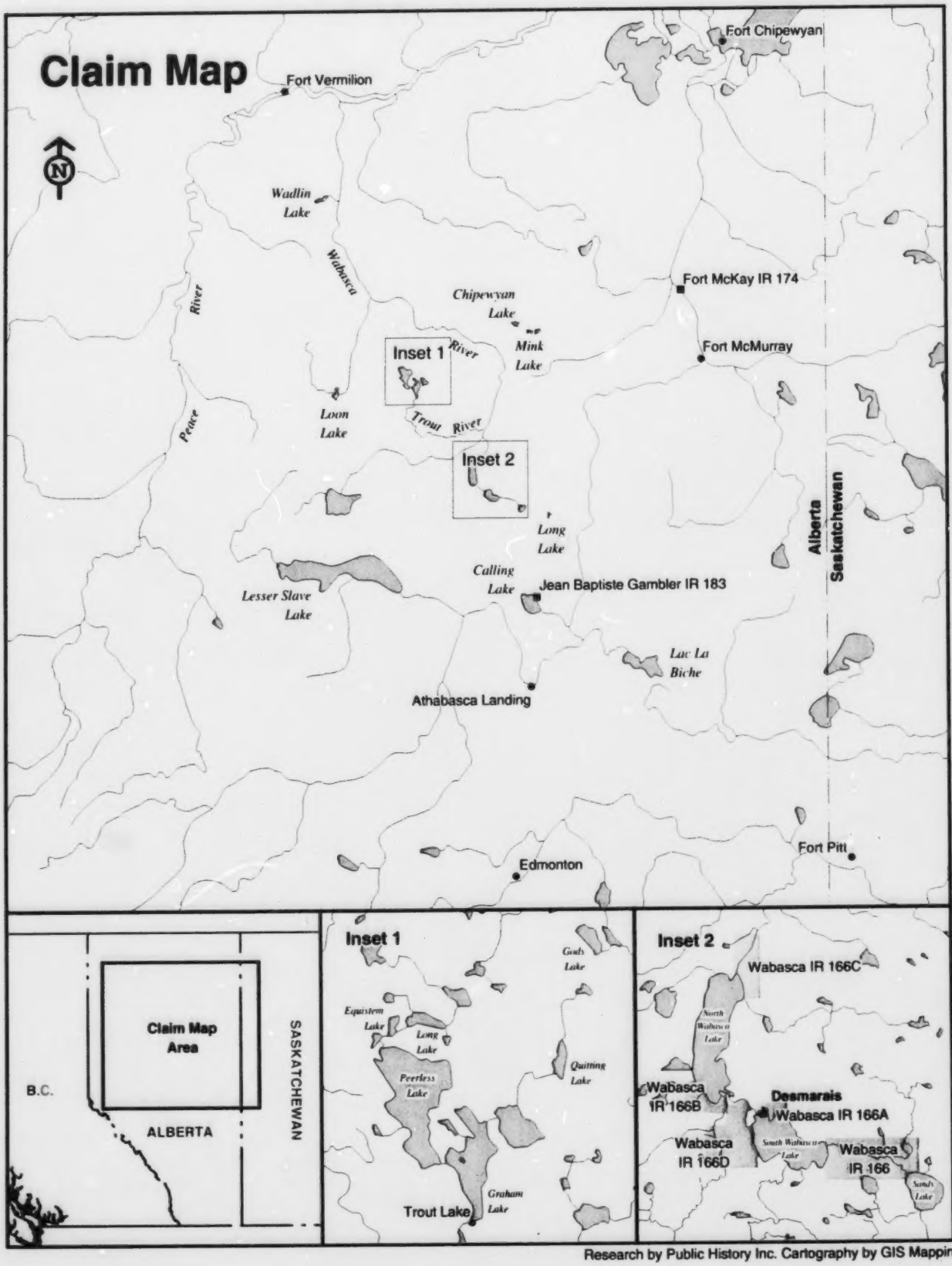
[17] ICC Transcript, October 29, 1996, pp. 13 (Alphonse Auger), 30 (Daniel Beaver), and 44 (Tommy Auger).

[18] G. Neil Reddekopp, "The Treaty Land Entitlement Claim of the Bigstone Cree Nation," report prepared for the Indian Claims Commission, January 1997 (ICC Exhibit 33, p. 17) [hereafter Reddekopp Report].



Research by Public History Inc. Cartography by GIS Mapping

> thirty individuals. These groups existed separate and apart from other entities as hunting groups through the fall, winter and spring of each year. For a period in the summer of each year, several hunting bands would congregate on the shores of lakes that would allow subsistence through fishing and local hunting. The regional bands which resulted from this congregation, which could number from one hundred persons to a group two to three times that size, represented the largest co-operative unit in the area. Membership among both hunting or regional bands was flexible, with individuals and families being free to leave one group and join another, either temporarily or permanently.[19]

Bigstone elders gave compelling evidence describing this pattern of seasonal migration. According to Trout Lake elder George Noskiye,

> there were not that many people in Trout Lake at the time [as late as the 1930s] because of the fact, you know, you have to survive, you can't maintain in one area. Because people, wherever people see where they can make, you know, feed your family, that's where they will go and stay there, and move on and move on.[20]

Elders who met with the Commission acknowledged that the limited contact among the various "hunting bands" complicated their efforts to assist the Commissioners in understanding the details of 19th- and early 20th-century history in the Bigstone communities. Witnesses spoke of what were likely similar, rather than common, histories of their ancestors. In the words of Peerless Lake elder Felix Noskiye,

> you have to remember, everyone had a little territorial area, like from anywhere wherever the – each individual family picked a spot for the best; they call their little territory. So people were far scattered.
>
> The only thing that you hear is from your family. It's not a matter of gathering like it is today. So people were too scattered everywhere.[21]

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[19] This issue was also encountered by the Commission in the inquiry into the treaty land entitlement claim of the Fort McKay First Nation; see (1996) 5 ICCP 3 at 21.

[20] ICC Transcript, July 3, 1997, p. 199 (George Noskiye).

[21] ICC Transcript, July 3, 1997, pp. 154-55 (Felix Noskiye).

Almost three decades before the Commission met with Bigstone elders, an earlier generation of elders told their stories in a series of other forums. The late Martin Beaver, the father and grandfather of current Bigstone elders, recalled the late 19th century as a time when "[p]eople used to travel around, they moved even in the winter time."[22]

Only a handful of those lakes identified above as at least seasonal residences were suitable to act as meeting places for the entities described by Professor Smith as "regional bands." Bigstone elder Alphonse Auger remembers the north end of North Wabasca Lake (contained within the current Indian Reserve [IR] 166C) as one such location,[23] while other sources have identified Sandy Lake, Trout Lake, and Chipewyan Lake as meeting places for "regional bands."[24]

Representatives of European society set down their first permanent roots in the Bigstone communities only about a generation prior to the signing of Treaty 8, 75 to 100 years after their appearance at Fort Chipewyan, Fort Vermilion, Fort McMurray, and Lesser Slave Lake. The precise date at which the Hudson's Bay Company (HBC) established a post between North and South Wabasca Lakes is unknown, but it was probably built shortly after HBC Inspector Richard Hardisty recommended it in 1880, describing Wabasca as "a spot where a great many Indians resort during the winter for fishing and hunting."[25] Bigstone elders remember that the first HBC post at Wabasca was managed by Charles Houle, a Métis who moved to Wabasca from Lac La Biche.[26] The

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22 *"The Wabasca Tapes," Transcripts of 1968 Interviews with Seven Elders of the Bush Cree Nation, by Ray Yellowknee* (ICC Exhibit 1, p. 61, interview with Martin Beaver). Martin Beaver was the father of Daniel Beaver and the grandfather of Alphonse Auger (ICC Transcript, October 29, 1996, pp. 30 and 16).

23 ICC Transcript, October 29, 1996, p. 14 (Alphonse Auger).

24 Richard Daniels, "Land Rights of the Isolated Communities of Northern Alberta," report prepared for the Isolated Communities Advisory Board and the Lubicon Lake Band, January 1975 (ICC Exhibit 43, pp. 2, 4, 5).

25 Richard Hardisty, Inspector, to James A. Grahame, Chief Commissioner, June 20, 1880, Provincial Archives of Manitoba, Hudson's Bay Company Archives (hereafter HBCA), D20/16, quoted in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 5).

26 Patricia Sawchuk and Jarvis Gray, *The Isolated Communities of Northern Alberta* (Edmonton: Metis Association of Alberta, 1980), interview with Harry Houle, grandson of Charles Houle (ICC Exhibit 25, p. 343).

establishment at Wabasca did not become an independent post until 1900, after being an outpost of Lac La Biche (until 1888) and Athabasca Landing.[27]

HBC outposts at Trout Lake and Chipewyan Lake likely predate the Wabasca outpost. An 1889 HBC inspection report described one of the post's four buildings as a "very old" sales shop, and indicated that the outpost had been in existence for at least 16 years.[28] Although precise information concerning the establishment of the HBC outpost at Chipewyan Lake is lacking, it likely took place about the same time as the Trout Lake outpost was built.[29] Bigstone elders from Chipewyan Lake[30] and Trout Lake[31] credit the establishment of the outposts at these locations to two brothers, Jean Baptiste and Alexis Auger, respectively. Descendants of Jean Baptiste and Alexis were well represented among the elders who met with the Commission during its inquiry.

An Oblate missionary may have made a brief visit to Trout Lake as early as 1878,[32] but the first documented missionary visit was in February 1891, when an Oblate missionary stayed for several days and conducted 31 baptisms and six marriages.[33] The next month, the missionary moved

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27 Richard Hardisty, Inspector, to James A. Grahame, Chief Commissioner, June 20, 1880, HBCA, D20/16, quoted in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 5).

28 Inspection Reports on Posts in the Athabasca, Peace River, and Mackenzie River Districts, taken from notes made by the late Richard Hardisty, 1889, HBCA, D25/9, p. 45, cited in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 5).

29 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 6).

30 Diane Mieli, *Those Who Know: Profiles of Alberta Native Elders* (Edmonton: NeWest, 1991), 208, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 7).

31 Peerless Lake Presentation to Indian Affairs, "And We Need Land: A Statement of Grievances by the Cree People of Peerless Lake, Alberta," December 1985 interview with Julian Gladue (ICC Exhibit 2, p. 49).

32 A. Philippot, omi, "Annales de la Mission Saint-Martin du Wabaska, 1891–1941," unpublished manuscript, nd, p. iv (ICC Exhibit 20B, doc. 323 [translation]).

33 Of the 31 baptisms, 29 involved the extended family of HBC trader Alexis Auger, including Alexis himself, his four children and their spouses, 19 grandchildren, and one great-grandchild. The six marriages involved Alexis, his four children, and one grandchild. G. Neil Reddekopp, Senior Manager Policy, Indian Land Claims, Alberta Aboriginal Affairs, to Bruce Hirsche, Bishop and McKenzie, Barristers and Solicitors, September 6, 1994. Referred to in Collection of Documents on Peerless Lake, History and Entitlement (ICC Exhibit 32).

on to Wabasca, where he baptised 38 persons and officiated at six marriages.[34] A Church of England missionary visited Wabasca about the same time, but details of his pastoral success are unknown.[35]

The 1891 missionary visit to Trout Lake extended only to the HBC post located at the south end of Graham Lake (identified by Bigstone elders as "Old Post"),[36] but when Bishop Emile Grouard followed in 1896, he was able to make a brief visit to the north end of Peerless Lake. His activity there was limited to five baptisms,[37] which Bishop Grouard attributed to the continuing influence of an individual he described as "*un sorcier fameux.*"[38] A Church of England missionary reached Peerless Lake in 1897,[39] the same year an Oblate missionary visited Chipewyan Lake.[40]

The relatively late and intermittent contact between missionaries and the population of the Bigstone communities rendered accurate estimates of the region's late 19th-century population difficult. In the early 1890s, Oblate missionaries advised the Indian Commissioner that the population of Wabasca was 248, of which 154 were Catholic, 20 were Protestant, and 74 were "pagan."[41] Not surprisingly in light of the intense competition between the Catholic and Protestant

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34 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 323, p. 1).

35 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 323, pp. 12-13).

36 ICC Transcript, October 29, 1996, pp. 64-65 (Tommy Auger).

37 One of the children baptised by Bishop Grouard was Thomas (Toma) Noskiye. Over a hundred years later, the Commission heard from George Noskiye, the 92-year-old son of Thomas Noskiye. ICC Transcript, July 3, 1997, pp. 189, 193 (George Noskiye).

38 E. Grouard, omi, "Un Journal de voyage de Mgr. E. Grouard, Missions de la Congregation des Oblats de Marie Immaculée, December 1896," p. 425, Provincial Archives of Alberta (hereafter PAA), accession 71.220, in Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 268).

39 Reverend Charles R. Weaver to Bishop Richard Young, December 4, 1897, PAA, accession 70.387, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 252).

40 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 323, p. 18).

41 A. Forget, Commissioner of Indian Affairs, North-West Territories, to Right Reverend Richard Young, Bishop of Athabasca, June 21, 1894, PAA, accession 70.387, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 12).

missionaries,[42] the Church of England missionary did not dispute the estimate of total population, but suggested that the proportion between the membership of the two churches was approximately the reverse of that given by his rival.[43] The Church of England missionary made no reference to a population at Trout Lake in the early 1890s, but Catholic missionaries estimated that 74 persons lived at Trout Lake and God's Lake, and that these persons were divided almost equally into Catholics and "pagans."[44]

Several months before the Treaty 8 and Athabasca Scrip Commissions began their work in the summer of 1899, the North-West Mounted Police undertook a census of the sites the Commissioners hoped to visit. They were prevented by high water from visiting Wabasca, but they were able to reach Trout Lake,[45] where they encountered a population of 86.[46]

THE TREATY AND SCRIP COMMISSIONS OF 1899

Wabasca was the final scheduled stop for the Treaty and Scrip Commissions in 1899, with Treaty Commissioner J.H. Ross meeting the assembled population there on August 14, 1899.[47] After a brief

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[42] The late Bigstone elder Martin Beaver, who spent different times in his life as a member of both the Roman Catholic and the Church of England congregations at Wabasca, recalled in 1968 the bitter rivalry between the missionaries, including one missionary's description of another as "the devil's disciple." *"The Wabasca Tapes," Transcripts of 1968 Interviews with Seven Elders of the Bush Cree Nation, by Ray Yellowknee*, interview with Martin Beaver (ICC Exhibit 1, pp. 75-76).

[43] Statistics for Wabasca, November 25, 1894, PAA, accession 70.387, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, pp. 6-7).

[44] Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 12).

[45] The name "Trout Lake" has meant different things at different times. In modern parlance, it refers to the community at the south end of Graham Lake, occupied largely but not exclusively by members of the Bigstone Cree Nation. Historically, it may refer to the HBC post located on the site of the modern community or be the collective name for the two lakes now known as Peerless Lake and Graham Lake, with the stream connecting the two lakes being described as "Trout Lake Narrows." Letter of September 6, 1994, referred to in a Collection of Documents on Peerless Lake, History and Entitlement (ICC Exhibit 32).

[46] North-West Mounted Police, Census of Indians and Half-breeds in Peace River District, April 5, 1899, National Archives of Canada (hereafter NA), RG 18, vol. 1435, file 76, pt 2, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 27).

[47] Because of rainy weather and high water, the Treaty and Scrip Commissioners were two weeks behind schedule by the time they reached Lesser Slave Lake, their first stop; they therefore had to split up and travel in two groups to make up time. Originally, Chief Commissioner David Laird travelled alone, and the two other Commissioners,

discussion, an adhesion to Treaty 8 was executed by Chief Joseph Bigstone (Kapusekonew) and Headmen Joseph and Michel Auger (written Ansey in the treaty document), Wapoose, and Louison (Louisa in the treaty document) Beaver.[48]

Bigstone elders were able to provide few details of the signing of the adhesion, although Alphonse Auger did indicate that the opportunity to gain permanent "ownership" of a reserve was the factor which led his grandfather Martin Beaver to enter treaty.[49] In the late 1960s, Martin Beaver himself was interviewed regarding his recollection of the meeting with Commissioner Ross. According to Martin, who was a young adult in 1899,[50]

> he [the treaty Indian] could hunt whenever he wanted, there were no limitations in that sense, he was pretty well free to do what he needed to do to survive ...
> And eventually he would get houses ...
> ...
> the people that chose to become Treaty they were given $10.00 initially and $5.00 for the handshake to seal the deal. Every year for as long as the sun shines and the river flows this is going to happen – every person would receive $5.00.[51]

With specific reference to the promise of reserve land, Martin Beaver remembered the Treaty Commissioner as indicating "there were reserve boundaries that would be developed in the future."[52]

James Ross and J.A.J. McKenna remained together. Later, Ross and McKenna were forced to travel separately in order to visit both Wabasca and Fort McMurray, "Report of the Commissioners for Treaty 8," *Treaty No. 8, Made June 21, 1899 and Adhesions, Reports, Etc.*, DIAND Publication QS-0576-EE-A-16 (1899; repr. Ottawa: Queen's Printer, 1966). Treaty 8 is reprinted in (1995) 3 ICCP 87.

[48] *Treaty No. 8, Made June 21, 1899 and Adhesions, Reports, Etc.*, DIAND Publication QS-0576-EE-A-16 (1899; reprinted Ottawa: Queen's Printer, 1966). Treaty 8 is reprinted in (1995) 3 ICCP 87.

[49] ICC Transcript, October 29, 1996, p. 16 (Alphonse Auger).

[50] Documentary evidence obtained by the Commission, from various sources, indicate that Martin was born about 1878 and therefore was 21 in 1899. Referred to in Reddekopp Report, January 1997, Table 1, number 82 (ICC Exhibit 33). At the time Martin was interviewed in 1968, it was suggested that he was in his early 30s in 1899. *"The Wabasca Tapes," Transcripts of 1968 Interviews with Seven Elders of the Bush Cree Nation, by Ray Yellowknee*, interview with Martin Beaver (ICC Exhibit 1, p. 60).

[51] *"The Wabasca Tapes," Transcripts of 1968 Interviews with Seven Elders of the Bush Cree Nation, by Ray Yellowknee*, interview with Martin Beaver (ICC Exhibit 1, p. 61).

[52] *"The Wabasca Tapes," Transcripts of 1968 Interviews with Seven Elders of the Bush Cree Nation, by Ray Yellowknee*, interview with Martin Beaver (ICC Exhibit 1, p. 61).

Current and past elders also related stories regarding the choice to enter treaty or accept scrip in 1899. Most suggest that the effect of the decision between scrip and treaty was explained to, and understood by, those who were present in 1899. The late Catherine Auger, who received scrip at Wabasca in 1899 with her first husband, remembered almost 70 years later that she and the other scrip recipients "were told that the land you were given, you could sell, but you wouldn't have any rights."[53] According to the late Martin Beaver, the Treaty Commissioner required those who wished to apply for scrip to listen to the Commissioner's presentation in favour of entering treaty, so that, once the choice was made, "you cannot blame anybody else but yourself."[54]

Elder Alphonse Auger advised the Commission that one of those who chose scrip over treaty was Julien Beaver (identified by Alphonse as Joseph Beaver), the brother of Martin. According to Alphonse, a reserve was an unwelcome prospect to his great-uncle, since the latter didn't "want anybody to own him or he doesn't want to own the land."[55] The choice between treaty and scrip could be made freely by all who were at least 20 years of age, irrespective of the election made by other members of the same family,[56] and in 1968 the late Noel Boskoyous, himself a scrip recipient, recalled being allowed to make his choice at 18 because he had no living parents.[57]

However, there is evidence that, in some cases, the choice between treaty and scrip was not entirely free. Elder Louise Auger told the Commission of one woman who was denied the right to

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53 *"The Wabasca Tapes," Transcripts of 1968 Interviews with Seven Elders of the Bush Cree Nation, by Ray Yellowknee,* interview with Catherine [Gallifer] Auger (ICC Exhibit 1, p. 61).

54 *"The Wabasca Tapes," Transcripts of 1968 Interviews with Seven Elders of the Bush Cree Nation, by Ray Yellowknee* interview with Martin Beaver (ICC Exhibit 1, p. 63)

55 ICC Transcript, October 29, 1996, p. 16 (Alphonse Auger).

56 *"The Wabasca Tapes," Transcripts of 1968 Interviews with Seven Elders of the Bush Cree Nation, by Ray Yellowknee*, interview with Martin Beaver (ICC Exhibit 1, p. 63).

57 *"The Wabasca Tapes," Transcripts of 1968 Interviews with Seven Elders of the Bush Cree Nation, by Ray Yellowknee*, interview with Noel Boskoyous (ICC Exhibit 1, p. 135).

enter treaty because she "was a very fair lady, just like a white person."[58] As a result, both she and her husband were compelled to apply for scrip, even though they were Indians from Trout Lake.[59]

In 1899, 196 persons were paid gratuity and annuity as members of the Bigstone Band,[60] while 106 others received scrip at Wabasca and two other nearby locations.[61] The next year, 39 additional persons joined the Bigstone Band,[62] while 25 more were taken into treaty in 1901, most of them after making unsuccessful scrip applications.[63]

There is no doubt that the population which had entered treaty by 1901 was considerably smaller than that of the Bigstone communities. Elders advised the Commission that some of those who spent part of the year at Wabasca were absent hunting when Commissioner Ross visited, since they "had to go out in the bush to make their living to survive."[64] An even more significant cause for the less-than-comprehensive attendance at Wabasca in 1899 was the diffusion of the Bigstone population over a vast area of northern Alberta. According to elders, there was a certain randomness to attendance at the meeting with the Treaty Commissioner at Wabasca in 1899, since those in attendance were those who were there for some other purpose, such as trading furs.[65] Alphonse

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58 ICC Transcript, October 29, 1996, p. 22 (Louise Auger).

59 ICC Transcript, October 29, 1996, pp. 23-24 (Louise Auger).

60 Cree Band at Wabasca, Annuity Paylist, August 14, 1899, NA, RG 10, vol. 9432 (ICC Exhibit 20B, doc. 33).

61 In 1899, 64 persons received scrip at Wabasca, 36 at the confluence of the Athabasca and Calling Rivers (Calling River Portage), and 6 at Pelican Portage on the Athabasca River. James Walker and Arthur Coté, Half-breed Commissioners, to Clifford Sifton, Minister of the Interior, September 30, 1899, NA, RG 15, vol. 771, file 518158, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 8).

62 Cree Band at Wabasca, Annuity Paylist, August 27, 1900, NA, RG 10, vol. 9433, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 36).

63 Cree Band at Wabasca, Annuity Paylist, August 1901, NA, RG 10, vol. 9434, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 43).

64 ICC Transcript, October 29, 1996, p. 22 (Louise Auger).

65 ICC Transcript, October 29, 1996, p. 18 (Alphonse Auger).

Auger told the Commission that only two of his paternal grandfather's four brothers entered treaty in 1899, the other two being at Trout Lake or Loon Lake.[66]

Historians of the "isolated communities" north of Wabasca have concluded that few residents of these communities entered Treaty 8 in its early years,[67] a conclusion borne out by the evidence of elders and other documentary sources. No Trout Lake residents entered treaty when the adhesion was signed at Wabasca in 1899 (although the man who the elders indicate was compelled to apply for scrip when his wife was denied the right to enter treaty was the grandson of Alexis Auger, who ran the HBC outpost at Trout Lake).[68] Two descendants of Alexis Auger entered treaty in 1900, one son becoming Number 62 of the Bigstone Band[69] and one grandson becoming the first (and only) member of the "Trout Lake Band,"[70] which disappeared the next year. Another grandson of Alexis Auger was taken into treaty in 1901 after his application for scrip was refused.[71] Elders interviewed at Chipewyan Lake in 1980 remembered that only two families from their community entered treaty in the early years of the 20th century,[72] although a study carried out in the 1970s indicated that five of the families who were taken into treaty in 1901 after their scrip applications were refused were from Chipewyan Lake.[73]

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66 ICC Transcript, October 29, 1996, pp. 16-17 (Alphonse Auger).

67 Patricia Sawchuk and Jarvis Gray, *The Isolated Communities of Northern Alberta* (Edmonton: Metis Association of Alberta, 1980) (ICC Exhibit 25, p. 273).

68 Dominique Auger was the son of Jean Baptiste Auger, who was in turn the oldest son of Alexis Auger. Family Trees of those Persons in Categories A – G (ICC Exhibit 34B).

69 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 36).

70 Cree Band at Trout Lake, Annuity Paylist, August 27, 1900, NA, RG 10, vol. 9433, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 9).

71 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 43).

72 Patricia Sawchuk and Jarvis Gray, *The Isolated Communities of Northern Alberta* (Edmonton: Metis Association of Alberta, 1980), interview with George Beaver and Bella Cutwing (ICC Exhibit 25, p. 371).

73 Collection of Documents on Peerless Lake, History and Entitlement (ICC Exhibit 32, p. 3). This conclusion is not inconsistent with the recollection of the elders, since three of the unsuccessful applications in 1901 were made by members of the Papanes/Yellowknee family and two were by members of the Oar family.

The limited impact of the work of the Treaty and Scrip Commissions on the population of the "isolated communities" was not unknown to the Commissioners themselves. In 1900, J.A. Macrae was appointed sole Commissioner to complete the work begun in 1899, and when he made his report, he noted:

> There yet remains a number of persons leading an Indian life in the country north of Lesser Slave Lake, who have not accepted treaty as Indians, or scrip as half-breeds, but this is not so much through indisposition to do so as because they live at points distant from those visited, and are not pressed by want. The Indians of all parts of the territory who have not yet been paid annuity probably number about 500 exclusive of those in the extreme northwestern portion, but as most, if not all, of this number belong to bands that have already joined in the treaty, the Indian title to the tract it covers may be fairly regarded as being extinguished.[74]

Over the decade following Commissioner Macrae's report, few people from the "isolated communities" entered treaty with the Bigstone Band. The only adhesion from these communities took place in 1905, when four families from Chipewyan Lake numbering 15 people adhered to treaty.[75]

First Survey of Reserves

When the Treaty Commissioners reported the results of their work in the summer of 1899, they noted the reluctance of many of the First Nations they met to the concept of reserves for residential purposes:

> [T]he Indians were generally averse to being placed on reserves. It would have been impossible to have made a treaty if we had not assured them that there was no intention of confining them to reserves. We had to very clearly explain to them that the provision of reserves and allotments of land were made for their protection, and

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[74] *Treaty No. 8, Made June 21, 1899, and Adhesions, Reports, Etc.* (1899; reprinted Ottawa: Queen's Printer, 1966), p. 21.

[75] Cree Band at Wabasca, Annuity Paylist, September 2, 1905, NA, RG 10, vol. 9438.

> to secure to them in perpetuity a fair portion of the land ceded, in the event of settlement advancing.[76]

At Wabasca, discussion of reserves was limited to the statement that reserve boundaries "would be developed in the future."[77]

Yet Wabasca was also one of those locations within Treaty 8 where, as early as the start of the 20th century, "settlement" was "advancing," although this advance was initially limited to the open plains at the elbow formed by North and South Wabasca Lakes.[78] Shortly after the signing of Treaty 8, this parcel of land was surveyed into 28 river lots and came to be known as "Wabasca Settlement." Declarations in support of applications for "free grants" of land, based on the occupation of and improvement to specific parcels of land prior to the signing of Treaty 8, established that eight of these lots were occupied by churches, fur traders, or individual Métis by 1899, and in the years that followed, three additional lots were taken up and applications were made for ownership of additional haylands.[79]

In order to "secure" to themselves a "fair portion" of land in the vicinity of Wabasca, members of the Bigstone Cree Nation staked out two reserves in 1909 and sought an early survey of the lands. Their application was endorsed by the inspector for Treaty 8, who supported the First Nation's contention that they were at risk of losing access to the "best land" in the vicinity. However, a marginal note made by the recipient of the inspector's report suggested that the matter could be deferred until 1911 or 1912.[80]

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[76] *Treaty No. 8, Made June 21, 1899 and Adhesions, Reports, Etc.*, DIAND Publication QS-0576-EE-A-16 (Ottawa: Queen's Printer, 1966). Treaty 8 is reprinted in (1995) 3 ICCP 87.

[77] *"The Wabasca Tapes," Transcripts of 1968 Interviews with Seven Elders of the Bush Cree Nation, by Ray Yellowknee*, interview with Martin Beaver at p. 61, interview with Martin Beaver at p. 63 (ICC Exhibit 1).

[78] Community histories suggest that the tall grasses in this plain, which, when seen in contrast to the green of the nearby forest, appeared almost white, were responsible for the area's name (*Wapascow* being the Cree word for "white grass"). "*Kitaskeenow*: Cultural Land Use and Occupancy Study," report prepared by the Arctic Institute of North America, 1997 (ICC Exhibit 42, p. 71).

[79] Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 10).

[80] H.A. Conroy, Inspector, Treaty 8, to Frank Pedley, Deputy Superintendent General of Indian Affairs, December 30, 1909, NA, RG 10, vol. 3979, file 156710-31, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 48).

Over the three years that followed, local Métis applied for the ownership of an additional three lots in Wabasca Settlement,[81] and when the Indian agent for the Lesser Slave Lake Agency visited Wabasca in 1912 to pay annuity, he encountered considerable tension between the First Nation, on the one hand, and local Métis and fur traders, on the other, over the ownership of lands staked by the First Nation in 1909, but viewed by the others as community haylands.[82] The same year, the Bigstone Chief and Council wrote to the Department of Indian Affairs, repeating their request for an early survey.[83]

In August 1912, veteran Indian Affairs surveyor J.K. McLean was instructed to proceed to Wabasca and complete an immediate survey,[84] but the instructions arrived too late for him to complete the work within the 1912 season.[85] Surveys at Wabasca were included in instructions for 1913 given to surveyor McLean on April 1, 1913,[86] but he died suddenly less than two months later, before reaching Wabasca.[87] To replace McLean, Indian Affairs turned the Bigstone surveys over to I.J. Steele.[88] Unlike the experienced McLean, Steele had no background in the survey of Indian

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81 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 11).

82 Harold Laird, Assistant Indian Agent, Lesser Slave Lake Agency, to Secretary, Department of Indian Affairs, October 30, 1912, NA, RG 10, vol. 3979, file 156710-31, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 58).

83 Chief and Councillors of the Bigstone Band to Deputy Superintendent General of Indian Affairs, March 27, 1912, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 50).

84 J.D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, to J.K. McLean, DLS, August 19, 1912, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 57).

85 J.K. McLean, DLS, to Frank Pedley, Deputy Superintendent General of Indian Affairs, March 5, 1913, NA, RG 10, vol. 4019, file 279393-8, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 59).

86 J.D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, to J.K. McLean, DLS, April 1, 1913, NA, RG 10, vol. 4019, file 279393-8, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 60).

87 H.W. Fairchild to Frank Pedley, Deputy Superintendent General of Indian Affairs, May 25, 1913, NA, RG 10, vol. 4019, file 279393-8, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 62).

88 J.D. McLean, Assistant Deputy and Secretary, Department of Indian Affair to I.J. Steele, DLS, June 11, 1913, NA, RG 10, vol. 4019, file 279393-8, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 65).

reserves and was hired primarily because of his availability – in 1913, he was carrying out township surveys on the north shore of Lesser Slave Lake.[89]

After consulting with the local Indian agent, Steele held a meeting with Chief Bigstone and his Council on July 9, 1913, at which, the surveyor recorded, it was agreed that he would set aside four reserves along the shores of the two Wabasca Lakes.[90] It appears that the Bigstone Chief and Council had considerable input into the selection of the lands. To this day, elders refer to the large parcel of land extending east from South Wabasca Lake to Sandy Lake (IR166) as the "chief's reserve,"[91] while one of the councillors is credited with the selection of the land that was set apart as IR 166A.[92] Although not yet a councillor,[93] Martin Beaver was the recognized leader of the Bigstone members living near the north end of North Wabasca Lake, and he provided Steele with instructions regarding the survey of lands there (IR 166C).[94] This last reserve appears to have been one of the parcels staked by Bigstone members in 1909, but the other 1909 parcel, being south and southwest of Wabasca,[95] was not included in any of the four reserves.

Third-party interests were important in determining the boundaries of the reserves surveyed by Steele in 1913. Elders recall how notches were introduced into IR166C to exclude lands held by two Métis settlers along the Wabasca River and others who were located near where the Wabasca

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89 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 12).

90 I.J. Steele, DLS, Survey Diary, July 6 – September 28, 1913, NA, RG 10, vol. 4019, file 279393-8, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 68).

91 ICC Transcript, October 29, 1996, p. 47 (Louise Auger).

92 ICC Transcript, October 29, 1996, p. 26 (Louise Auger).

93 The 1912 letter to Indian Affairs confirmed that, of the four councillors who executed the adhesion at Wabasca in 1899, two (Hilaire Wapoose and Louison Beaver) remained in office. The two councillors who had died since 1899 had been replaced by Philippe Capotvert [Young] and Barthelemay Capotvert [Crow]. Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 50).

94 ICC Transcript, October 29, 1996, p. 14 (Alphonse Auger). It should be noted that Alphonse, the grandson of Martin Beaver, told the Commission that his grandfather had instructed Steele to include sone of the water of North Wabasca Lake into IR166C. The water to be included was north of a line that connected the southwest and southeast corners of the reserve. ICC Transcript, October 29, 1996 , pp. 15-16 (Alphonse Auger).

95 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 58).

River runs out of North Wabasca Lake.[96] Improvements made to lands by third parties appear to have influenced the decision to divide the reserve land to be surveyed into four blocks, since Steele later reported that the policy of Indian Affairs to exclude third-party improvements from reserves made it impractical for him to try to contain all the lands occupied by Bigstone members in one block.[97]

It is unclear to what extent, if any, the surveyor took into account the nominal land entitlement of the Bigstone Cree Nation under the reserve clause of Treaty 8.[98] Elders consistently denied that anything was said about this matter at the time of the 1913 surveys. According to Alphonse Auger, "the surveyors didn't tell him [Martin Beaver] that they could only take land for so many people" and "[t]hey [the surveyors] never mentioned so many acres."[99] Daniel Beaver added: "when the surveyors came ... nobody ever asked me [quoting Martin Beaver] that this reserve was supposed to be according to the number of people, numbers."[100]

Steele's own report does little to clarify the situation. He indicated that his overriding concern was to include all the homes of Bigstone members within the lands he surveyed, and his only reference to quantum was the advice that he surveyed "about sixty square miles" in the four reserves.[101] In fact, the four blocks totalled 37,352 acres, which was sufficient, under the reserve clause of Treaty 8, to satisfy the land entitlement of 291 persons.[102] When annuities were paid to

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96 ICC Transcript, October 29, 1996, pp. 28-29 (Alphonse Auger).

97 I.J. Steele, DLS, to J.D. McLean, Assistant Deputy and Secretary, Department of Internal Affairs, October 31, 1913, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 69).

98 This clause states, in part:

> And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for such bands as desire reserves, the same not to exceed in all one square mile for each family of five for such number of families as may elect to reside on reserves, or in that proportion for larger or smaller families.

99 ICC Transcript, October 29, 1996, pp. 15, 21 (Alphonse Auger).

100 ICC Transcript, October 29, 1996, p. 28 (Daniel Beaver).

101 I.J. Steele, DLS, to J.D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, September 20, 1913, NA, RG 10, vol. 4019, file 279393-9, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 66).

102 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 13).

members of the Bigstone Cree Nation about a month before Steele began his survey, they were paid to 281 persons,[103] and in subsequent years 50 persons received arrears for 1913.[104]

Because of the relative isolation of the Wabasca area and the policy of the Department of the Interior not to confirm reserves until they were connected to the nearest base line,[105] it was not possible for that department to respond immediately to the request by the Department of Indian Affairs for the passage of orders in council to confirm Steele's surveys.[106] In the end, IR 166B was confirmed in 1924, IR 166 and IR 166A in 1925, and IR 166C was not confirmed until May 15, 1930.[107]

POST-SURVEY ADHERENTS

After paying annuities in Wabasca in the autumn of 1911, Assistant Indian Agent Harold Laird, likely influenced by the lateness of the season, elected to proceed directly north to Fort Vermilion rather than take the much more circuitous route by way of the Peace River. Accordingly, he descended the Wabasca River to the mouth of the Trout River, then ascended the latter to the HBC outpost at Trout Lake to pay the small number of Bigstone members resident there.[108] Laird then

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103 Bigstone Band, Annuity Paylist, June 4, 1913, NA, RG 10, vol. 9450, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 64).

104 In 1914, 44 persons received arrears for 1913, while arrears for 1913 were paid to two persons in 1915 and four in 1925. Bigstone Band, Annuity Paylist, September 14, 1914, NA, RG 10, vol. 9452; Bigstone Band, Annuity Paylist, August 10, 1915, NA, RG 10, vol. 9454; Bigstone Band, Annuity Paylist, June 15, 1925, NA, RG 10, vol. 9474, Historical Documents from 1850–1989 (ICC Exhibit 20B, docs. 78, 79, and 103).

105 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, pp. 13-14).

106 J.D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, to Secretary, Department of the Interior, April 24, 1914, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 73).

107 Orders in Council PC 332, March 3, 1924, PC 955, June 22, 1925, and PC 1025, May 15, 1930, Historical Documents from 1850–1989 (ICC Exhibit 20B, docs. 100, 104, 112).

108 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 11).

continued north, following a trail along the west side of Graham and Peerless Lakes.[109] On the second day after leaving Trout Lake, Laird reached Equistem Lake, several miles north of Peerless Lake,[110] where

> there was an encampment of Cree Indians, under Chief Everlasting Voice. I counted 11 teepees and would judge that the Band numbered between 45 and 50 people, none of whom have ever taken Treaty. I had a talk with the Chief, and have no doubt that he and his Band could be induced to enter Treaty, if the Department so desired.[111]

Despite Laird's recommendation, the department did not "so desire," and a marginal note on the letter responded "wait till Indians ask to be taken into Treaty."[112]

A decade passed before another suggestion was made to bring the population of the "isolated communities" within the membership of the Bigstone Cree Nation. In April 1922, Father Y.M. Floc'h, an Oblate missionary working out of Grouard who made at least an annual tour of the vast area north of there, wrote to the Minister of the Interior recommending that the "Pure Indians" he encountered during his travels be taken into treaty.[113] The Department of Indian Affairs acknowledged that, if the persons described by Father Floc'h had in fact not received scrip, they were entitled to adhere to Treaty 8, and Agent Laird was instructed to investigate the matter.[114] Upon

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109 Harold Laird, Assistant Indian Agent, to Secretary, Department of Indian Affairs, October 30, 1911, NA, RG 10, vol. 3979, file 156710-31, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 48).

110 Daily Journal, Lesser Slave Lake Indian Agency, 1911, Glenbow-Alberta Institute Archives, accession M2218, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 11).

111 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 48).

112 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 48).

113 Y.M. Floc'h, omi, to Charles Stewart, Minister of the Interior and Superintendent General of Indian Affairs, April 5, 1922, NA, RG 10, vol. 7972, file 62-131, pt 1, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 96).

114 J.D. McLean, Acting Deputy Superintendent General of Indian Affairs, to Harold Laird, Acting Indian Agent, May 2, 1922, NA, RG 10, vol. 7972, file 62-131, pt 1, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 97).

Laird's confirmation that Father Floc'h's assertion was in fact accurate,[115] the agent was authorized to extend the benefits of treaty to "the Indians living North of Grouard who have not yet been taken into Treaty, and who have not been granted half-breed scrip."[116] Bigstone elder Alphonse Auger remembers the ensuing few years as a time when "the Bigstone Cree Nation was open."[117]

Over the five years that followed the decision to admit adherents into the membership of the Bigstone Cree Nation, the number of persons who took advantage of this opportunity was small.[118] One reason for this was identified by Treaty Commissioner Macrae when he first discussed the population of the "isolated communities" in 1900. He noted that the people who had not entered treaty in 1899 and 1900 were "not yet pressed by want."[119] This situation remained unchanged through the mid 1920s, an extended period during which the fur trade was almost uniformly profitable for all involved.[120] This was particularly true in the area around Peerless Lake. In the words of Bigstone elder Tommy Auger,

> [t]he reason why people have lived around Peerless and the whole surrounding area is because it was rich in pelts, and people didn't have to go and look for a place to sell their furs. People came to them and traded or bought the furs.[121]

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115 In particular, Laird identified the area north of Peerless Lake as one spot where a number of potential adherents could be found. Harold Laird, Acting Indian Agent, Lesser Slave Lake Agency, to Assistant Deputy and Secretary, Department of Indian Affairs, May 9, 1922, NA, RG 10, vol. 7972, file 62-131, pt 1, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 98).

116 J.D. McLean, Assistant Deputy Superintendent General of Indian Affairs, to Harold Laird, Acting Indian Agent, Lesser Slave Lake Agency, June 25, 1922, NA, RG 10, vol. 7972, file 62-131, pt 1, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 98).

117 ICC Transcript, July 3, 1997, p. 102 (Alphonse Auger).

118 The Bigstone paylists for 1923 and 1925 do suggest that 60 persons from Long Lake and Chipewyan Lake adhered to treaty in these two years. However, research conducted on behalf of the Commission suggests that a substantial number of these purported adhesions did not place. Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, pp. 16, 31-33, and Appendix A, pp. 8-10).

119 *Treaty No. 8, Made June 21, 1899 and Adhesions, Reports, Etc.*, DIAND Publication QS-0576-EE-A-16 (Ottawa: Queen's Printer, 1966), 21.

120 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, pp. 16-17).

121 ICC Transcript, October 29, 1996, p. 67 (Tommy Auger).

The same elder identified Chipewyan Lake as "an excellent area for trapping."[122] Competition kept prices high, as the French fur-trading firm Revillon Frères and independent traders opened up posts in competition with the HBC at Long Lake, Trout Lake, and Chipewyan Lake.[123]

In 1900, Commissioner Macrae downplayed open hostility to treaty, arguing that those who remained outside treaty were not motivated by "indisposition."[124] But the memories of modern elders and the observations of contemporaries certainly provide anecdotal evidence of the hostility of certain individuals, which may have had a considerable impact because of the influence of the persons in question.

In the late 1960s, elder August Auger recalled a trip he made to the Chipewyan Lake area in 1907 in the company of an Oblate missionary. The elder recalled vividly the opposition of Cutwing, an influential local resident, to the activities of the missionary and, by extension, the society the latter represented. Cutwing refused to assist in the baptism of the 15-year-old daughter of a friend, telling the girl that "the government and the church are trying to control you."[125] In 1980, Cutwing's octogenarian daughter recalled how her father had "hated for a long time to become a Treaty."[126] At Peerless Lake, the attitude of Okemow resembled that of Cutwing. In 1944, an Oblate missionary described Okemow as "a wild man" who "did not want to meet anyone."[127]

The northern Alberta fur trade declined by 30 per cent between 1925–26 and 1926–27 and did not recover in the years that followed.[128] It is not surprising that, now "pressed by want,"

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122 "*Kitaskeenow*: Cultural Land Use and Occupancy Study," report prepared by the Arctic Institute of North America, 1997 (ICC Exhibit 42, p. 79).

123 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 17).

124 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 37).

125 "*The Wabasca Tapes," Transcripts of 1968 Interviews with Seven Elders of the Bush Cree Nation, by Ray Yellowknee* , interview with Martin Beaver (ICC Exhibit 1, p. 61). Interview with August Auger (ICC Exhibit 1, p. 54).

126 ICC Exhibit 25, p. 375 (interview with George and Bella Beaver).

127 In the Matter of OCPC 744 and In the Matter of an Enquiry into the Question of Membership of Certain Individuals in the Indian Bands of Lesser Slave Lake Agency, Notes of Evidence, 1944, DIAND, vol. 6811, file 470-3-6, p. 206 (Evidence of Father Giroux).

128 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 17).

residents from the "isolated communities" chose to accept the benefits of treaty. In 1928, 40 persons, 23 from Long Lake and 17 (including Cutwing) from Chipewyan Lake, adhered to Treaty 8,[129] and between 1929 and 1937, inclusive, another 50 persons from Chipewyan Lake, Long Lake, and Trout Lake entered treaty as members of the Bigstone Cree Nation.[130]

Although the Indian agent for the Lesser Slave Lake Agency descended the Wabasca River from Wabasca to Fort Vermilion on several occasions after he was authorized to accept adherents from the area through which the river ran,[131] adhesions between 1928 and 1937 took place at Wabasca. Elders from the "isolated communities" remember their fathers travelling to Wabasca to pick up their annuities.[132] Because of the distance that had to be travelled on this trip, communities would delegate to several individuals the responsibility of travelling to Wabasca to collect annuities for the entire community.[133] To be so selected must have been viewed as an honour, as elder Solomon Noskiye remembers his father putting on his best suit before setting out for Wabasca.[134] Another elder remembers that residents of the "isolated communities" were often recorded as absent, since they were not always told the date of annuity payments in time to reach Wabasca.[135]

The era of adhesions came to an end in 1938, when the Indian agent flew to Long Lake and accepted 25 persons into treaty.[136] Apart from women who gained status through marriage to members of the Bigstone Cree Nation, only a small number of persons adhered to the First Nation

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129 Bigstone Band, Annuity Paylist, June 19, 1928, NA, RG 10, vol. 9480, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, pp. 18, 19).

130 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 19).

131 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 16).

132 ICC Transcript, July 3, 1997, p. 8 (Solomon Noskiye); July 3, 1997, p. 100 (Arnold O'rr).

133 ICC Transcript, July 3, 1997, p. 9 (Johnny Noskiye).

134 ICC Transcript, July 3, 1997, p. 182 (Solomon Noskiye).

135 ICC Transcript, July 3, 1997, pp. 101-02 (Arnold O'rr).

136 N.P. L'Heureux, Indian Agent, Report for June, July, and August, 1938, September 16, 1938, NA, RG 10, vol. 7972, file 62-131, pt 2, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 150).

between 1913 and 1940. In 1941, however, Indian Agent N.P. L'Heureux accepted 39 persons into the membership of the Bigstone Cree Nation.[137] Eight of these people were men who had previously been considered non-Indians, but who were married to Bigstone members. The remaining 31 were children of these marriages.[138] When asked by the Department of Indian Affairs to explain his actions,[139] L'Heureux explained that, in addition to being married to Indian women, the eight men all lived an "Indian mode of life."[140]

Second Survey

As early as 1925, local missionaries were forwarding to the Department of Indian Affairs a request, made on behalf of the Bigstone First Nation, for additional reserve land at Wabasca.[141] In endorsing the request, Acting Indian Agent Laird noted: "There has been a large number of Indians taken into the Wabasca Band since the survey made in 1913, and the Band is entitled to more land."[142] This matter was reviewed by Indian Affairs, and this review determined that, after taking into account natural growth, 109 persons had joined the Bigstone Cree Nation by marriage or adhesion between 1913 and 1925, inclusive.[143]

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137 Bigstone Band, Annuity Paylist, June 12-17, 1941, NA, RG 10, vol. 9257, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 35).

138 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 35).

139 T.R.L. MacInnes, Secretary, Indian Affairs Branch, Department of Mines and Resources, to N.P. L'Heureux, Indian Agent, Lesser Slave Lake Agency, October 10, 1941, NA, RG 10, vol. 8062, file 777/28-5, pt 5, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 35).

140 N.P. L'Heureux, Indian Agent, Lesser Slave Lake Agency, to Secretary, Indian Affairs Branch, Department of Mines and Resources, February 21, 1942, NA, RG 10, vol. 8062, file 777/28-3, pt 5, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 35).

141 Alfred Rault, omi, to P.J. Guy, omi, July 30, 1925, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 105).

142 Harold Laird, Acting Indian Agent, to Assistant Deputy and Secretary, Department of Indian Affairs, December 26, 1925, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 108).

143 D. Robertson, Chief Surveyor, Department of Indian Affairs, to Mr Awrey, February 4, 1926, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 109).

No action was taken in 1926, and the issue arose again in 1931, when a proposal was made to add seven sections of reserve to the Bigstone Cree Nation's land base. This proposal was based on a review of the First Nation's treaty land entitlement from a strict date-of-first-survey approach, concluding that, based on the amount of land surveyed in 1913 and the number of Bigstone members paid annuity or arrears for that year, the First Nation was entitled to an additional 4480 acres of reserve. However, a handwritten marginal note added to the memorandum outlining the proposal noted that additional land was required for "non-treaty indians since [1913] received into the band."[144] Plans to survey additional land for the Bigstone Cree Nation were delayed for a number of years, for reasons ranging from lack of funds[145] to poor weather and high water.[146]

When conditions were favourable for a survey at Wabasca in 1937, the Surveyor General suggested that the total amount of additional reserve land to the Bigstone Cree Nation was entitled to be calculated.[147] This calculation was made, and the Indian Affairs Branch concluded that, in addition to a shortfall of 4480 acres at the time of the 1913 survey, the Bigstone Cree Nation was entitled to additional reserve land for the 213 persons who had joined the First Nation since 1913. Accordingly, the department determined that the Bigstone Cree Nation was entitled to an additional 31,744 acres of reserve land under Treaty 8.[148] Notwithstanding this calculation of the Bigstone Cree Nation's outstanding land entitlement, Indian Affairs approached Alberta about setting apart only

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144 H.W. Fairchild to Chief Surveyor, Department of Indian Affairs, February 5, 1931, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 116).

145 Donald Robertson, Chief Surveyor, to Deputy Minister, Department of Indian Affairs, August 15, 1936, NA, RG 10, vol. 7778, file 27131-17, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 20).

146 Indian Agent's Diary, January 16, 1934, Glenbow-Alberta Institute Archives, accession M2218 (ICC Exhibit 20B, doc. 123); Donald Robertson, Chief Surveyor, to Deputy Minister of Indian Affairs, July 20, 1935, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 127).

147 F.H. Peters, Surveyor General and Chief, Hydrographic Service, to T.R.L. MacInnes, Secretary, Indian Affairs Branch, Department of Mines and Minerals, March 22, 1937, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 132).

148 H.W. McGill, Director of Indian Affairs, Indian Affairs Branch, Department of Mines and Resources, to J. Harvie, [Alberta] Deputy Minister of Lands and Mines, April 23, 1937, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 135).

an additional 6000 to 10,000 acres.[149] Survey instructions were not limited to this amount, although the surveyor was told to contact the department if he found more than 10,000 acres of appropriate land, so that appropriate consultations could be held with Alberta.[150]

From the time that requests for additional land at Wabasca were first made, it was clear that the Bigstone Cree Nation's primary need was for additional haylands.[151] Bigstone elders told of the need for lands for this purpose,[152] although they also recalled the crowding on the existing reserves.[153] Since 1925, it had been assumed that additional land for the Bigstone Cree Nation would be found north of South Wabasca Lake adjacent to one of the existing reserves,[154] although the Indian Commissioner warned as early as 1932 that settlers were taking up the available land in that area.[155]

By the time a surveyor arrived in Wabasca, he could find only 1000 acres of suitable land in the area mentioned in his instructions, and he proposed that he survey additional land southwest of Wabasca.[156] In selecting this land, the surveyor consulted with the local Indian agent[157] and,

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149 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 135).

150 F.H. Peters, Surveyor General and Chief, Hydrographic Service, Department of Mines and Resources, to B. F. Mitchell, ALS, June 5, 1937, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 138).

151 Historical Documents from 1850–1989 (ICC Exhibit 20B, docs. 105 and 108).

152 ICC Transcript, October 29, 1996, pp. 43-44 (Tommy Auger).

153 ICC Transcript, October 29, 1996, p. 33 (Rita Auger).

154 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 108).

155 W.M. Graham, Indian Commissioner, to Secretary, Department of Indian Affairs, January 5, 1932, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 121).

156 Cecil Donnelly, DLS, to Surveyor General of Canada, Department of Mines and Resources, July 25, 1937, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 140).

157 N.P. L'Heureux, Indian Agent, Lesser Slave Lake Agency, Report on Wabasca Lake Band, August 9, 1937, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 143).

according to the memories of elders, with the Bigstone Chief and Council as well.[158] The Indian agent described the land surveyed as "fine farm land,"[159] and Bigstone elders attested to the agricultural capacity of the land.[160]

Although the land surveyed in 1937 was not confirmed as the 14,432.7-acre IR 166D until 1958,[161] Bigstone members began to make immediate use of it. Movement onto the surveyed parcel began in 1938,[162] and by the next year, it was the most populous of the Bigstone Reserves.[163]

One unresolved question is why additional land was not surveyed in 1937, although contemporary documents and the memories of elders suggest some answers. According to elders Rita and Alphonse Auger, the surveyor was forced to cease work when he encountered the farms and haying operations of third parties.[164] The desire not to interfere with the interests of third parties apparently also led to the decision not to survey additional land adjacent to IR 166A and IR 166B,[165] and isolation contributed to the reluctance to survey haylands requested by Councillor Martin Beaver about 20 kilometres north of IR 166C.[166]

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158 ICC Transcript, October 29, 1996, pp. 26-27 (Louise Auger).

159 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 143).

160 ICC Transcript, October 29, 1996, p. 33 (Rita Auger); pp. 43-44 (Tommy Auger). However, Rita Auger also noted that, in the decades that followed the survey, much of the reserve has been flooded by beaver dams. ICC Transcript, October 29, 1996, p.35 (Rita Auger).

161 Order in Council PC 1058-931, July 4, 1958, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 218).

162 ICC Transcript, October 29, 1996, p. 32 (Rita Auger); p. 60 (Alphonse Auger).

163 A 1939 census revealed that 83 Bigstone members lived on IR166C, 82 on IR166A, 52 on IR166B, and 44 on IR166. In contrast, 141 Bigstone members had taken up residence on the "new reserve." Bigstone Band, Annuity Paylist, June 13-19, 1939, NA, RG 10, vol. 9251, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 154).

164 ICC Transcript, October 29, 1996, p. 34 (Rita Auger).

165 ICC Transcript, October 29, 1996, p. 43 (Tommy Auger).

166 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 143).

REQUESTS FOR RESERVES IN "ISOLATED COMMUNITIES"

When Indian Agent Napoleon L'Heureux visited Long Lake in 1938, he was presented with a request for a reserve for the Bigstone Cree Nation members resident in the area surrounding Peerless and Trout Lakes,[167] a request endorsed by the agent. L'Heureux was able to confirm that two separate parcels had been selected (one, on the east side of Graham Lake, was for residential purposes, and the other, surrounding Quitting [then known as Skunk] Lake, for haylands),[168] and the request was sufficiently specific to allow the agent to identify the legal description (down to the theoretical sections) of the lands selected.[169]

There is a longstanding tradition among elders that additional steps were taken to satisfy the request for reserve land. The late Colin Trindle, appointed as Bigstone headman for the area in 1937,[170] claimed until his death that a federal official "surveyed the land and he gave the land to us."[171] Current elders repeated Colin Trindle's assertion that the selected land was "pegged,"[172] but suggest that Trindle was provided with survey pegs and told to place them himself.[173] This was not an uncommon practice, and had in fact been followed when the Bigstone Cree Nation wished to select land near Wabasca in 1909.[174] Some elders advised the Commission that Colin completed this process,[175] while others suggested that although Colin began to place the pegs, he ran out of them

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167 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 143).

168 Conversation between Commission staff and Peerless Lake elders George Cardinal, Louis Cardinal, and Louise Smith, Peerless Lake, October 30, 1996.

169 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 143).

170 Bigstone Band, Annuity Paylist, July 1-3, 1937, NA, RG 10, vol. 9245, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 139).

171 Peerless Lake Presentation to Indian Affairs, "And We Need Land: A Statement of Grievances by the Cree People of Peerless Lake, Alberta," December 1985, interview with Colin Trindle (ICC Exhibit 2, p. 53).

172 ICC Transcript, July 3, 1997, p. 152 (Felix Noskiye).

173 ICC Transcript, October 29, 1996, p. 42 (Alphonse Auger).

174 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 46).

175 ICC Transcript, October 29, 1996, p. 42 (Alphonse Auger).

before finishing his work and was unable to obtain more.[176] Still other elders suggest that Colin was promised survey pegs but did not receive them,[177] or that he was promised that the land requested would be surveyed in the future.[178]

Whatever differences exist among the recollections of elders regarding the response to the 1938 request for reserve land, they agree that, even if Colin Trindle met with a surveyor in 1938, the latter left after the meeting and "never came back."[179] But this was not the end of the matter as far as Indian Affairs was concerned. In 1940, the inspector of Alberta Indian Agencies recommended that action be taken "without delay" to secure reserve land completely surrounding Long Lake, although the inspector did not explain his recommendation to set apart land in a spot other than those parcels selected in 1938.[180]

Although not as much attention was paid historically to the question of reserve land at Chipewyan Lake, the matter was not completely unaddressed. Elders remember persistent requests for a reserve "right in the settlement of Chipewyan Lake"[181] and a promise of reserve land in the vicinity.[182] In 1940, the inspector recommended that land be acquired from Alberta to establish a reserve which would completely surround Chipewyan Lake.[183]

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176 ICC Transcript, July 3, 1997, pp. 190-92 (George Noskiye).

177 ICC Transcript, October 29, 1996, p. 42 (Rita Auger).

178 ICC Transcript, October 29, 1996, p. 46 (Louise Auger); ICC Transcript, October 29, 1996, pp. 9-10 (Johnny Noskiye).

179 ICC Transcript, October 29, 1996, p. 42 (Alphonse Auger).

180 C. Pant Schmidt, Inspector of Indian Agencies, Alberta Inspectorate, to Secretary, Indian Affairs Branch, Department of Mines and Resources, March 29, 1940, DIAND, file 777/30-1, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 161).

181 ICC Transcript, July 3, 1997, p. 96 (Arnold O'rr).

182 ICC Transcript, July 3, 1997, p. 92 (Arnold O'rr).

183 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 161).

MEMBERSHIP EXPULSIONS

Despite the large number of persons who entered treaty from the "isolated communities" in the 1920s and 1930s, the event that provoked a backlash from the Department of Indian Affairs was the admission of eight men and their children at Wabasca in 1941.[184] Shortly after learning of the Indian agent's actions in this regard, the department advised L'Heureux that Malcolm McCrimmon, chief clerk of the Reserves and Trust Sections, had been appointed to accompany the agent on the latter's trip to pay annuities in 1942.[185]

Having formed the opinion, even before his arrival in Wabasca, that over the previous decades "a large number of half breeds" had been admitted to treaty,[186] it is hardly surprising that McCrimmon expelled the eight families admitted the previous year,[187] but he was far from finished. By the time he had visited Wabasca, Chipewyan Lake, and Long Lake, he had removed 256 persons from the Bigstone paylists, justifying his actions on the grounds that the persons he had removed were "non-Indians."[188]

Elders told the Commission of the heartbreak experienced by those who were removed. George Cardinal, who was six years old at the time he, his father, and his siblings were denied their annuities, remembered, "I cried because $5 then was a lot of money."[189] Positions of authority provided no protection against removal. Elzear O'rr told of the treatment of Joseph Cardinal, the Bigstone headman at Chipewyan Lake:

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184 Referred in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 35).

185 T.R.L. MacInnes, Secretary, Indian Affairs Branch, Department of Mines and Resources, to N. L'Heureux, Indian Agent, Lesser Slave Lake Agency, October 10, 1941, NA, RG 10, vol. 8062, file 777/28-3, pt 5, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 296).

186 Malcolm McCrimmon to D. J. Allen, Superintendent of Reserves and Trusts, Indian Affairs Branch, Department of Mines and Resources, June 2, 1942, NA, RG 10, vol. 8062, file 777/28-3, pt 5, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 36).

187 Bigstone Band, Annuity Paylist, June 12 and 13, 1942, NA, RG 10, vol. 9260, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 167).

188 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 36).

189 ICC Transcript, July 3, 1997, p. 172 (George Cardinal).

> So at that time Joe Cardinal was the representative from the Band. So he told me, like, he said that there was a Treaty happening in our house and Joe was translating for the people of Chipewyan Lake that day when those people came in and that's the time he got kicked out, Joe Cardinal got kicked out. He has to take off all his uniform as a Bigstone Band Councillor and he was kicked out of Treaty.[190]

Even the personal intervention of Chief Bigstone could not prevent McCrimmon's expulsions from touching the Chief's own family. Despite evidence that Chief Bigstone had raised his adopted son Aristide from shortly after the latter's birth,[191] Aristide Bigstone was expelled from treaty on the ground that his natural parents were non-Indian.[192] Elder Rita Auger recalled this event:

> Well, he [Aristide] was treaty because he was adopted by Indian custom. I guess he [Chief Bigstone] married this woman and the woman had a boy already. Then he [the Chief] adopted this boy Aristide Bigstone ... He was on the band list for a while, and that is when he was struck off the list ... And they were known as non-treaties because ... maybe he [McCrimmon] didn't recognize the Indian custom. But he was – because it says in there that the chief had adopted him, and that he had a number, the chief's number to begin with.[193]

Some of the families removed in 1942 petitioned or wrote personally to Ottawa, seeking a reconsideration of McCrimmon's expulsions.[194] They were supported by letters from Chief Bigstone, the members of Parliament for Athabasca and Peace River, and a local missionary.[195]

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190 ICC Transcript, July 3, 1997, p. 90 (Elzear O'rr).

191 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, Appendix E, p. 1).

192 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 167).

193 ICC Transcript, October 29, 1996, p. 41 (Rita Auger).

194 Petition of Joseph Houle, Bernard Houle, et al., July 24, 1942; Daniel Houle to Superintendent General, Department of Indian Affairs, August 14, 1942, DIAND, vol. 8062, file 777/28-3, pt 6, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 37).

195 Chief Joseph Bigstone to Superintendent General, Department of Indian Affairs, June 17, 1942, NA, RG 10, vol. 8062, file 777/28-3, pt 5, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 169); J.M. Dechene, MP Athabasca, to T.A. Crerar, Minister of Mines and Resources, August 25, 1942, and J.H. Sissons, MP Peace River, to T.A. Crerar, Minister of Mines and Resources, December 15, 1943, NA, RG 10, accession 83-84/066, box 21, file 777/1-1, pt 1, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, pp. 37, 39-40); L. Beuglet, omi, to H.W. McGill, Director, Indian Affairs Branch, Department of Mines and Resources, June 30, 1942, NA, RG 10, vol. 8062, file 777/28-3, pt 5, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 170).

In response to the outcry, the Minister of Mines and Resources appointed Justice W.A. MacDonald of the Supreme Court of Alberta to conduct an inquiry to determine "who is or is not a member of any band of Indians."[196] Justice MacDonald spent six days gathering evidence in Wabasca, hearing evidence from the Bigstone Chief, councillors, and elders, many of the persons expelled and their relatives, missionaries, and other witnesses. After returning to Edmonton and hearing legal arguments from counsel for the Department of Indian Affairs and a lawyer appointed to represent those removed from treaty throughout the Lesser Slave Lake Agency, Justice MacDonald completed his report in August 1944.[197]

Justice MacDonald recommended that 143 persons removed from membership in the Bigstone Cree Nation be reinstated.[198] After reviewing the recommendations, the Indian Affairs Branch reinstated 119 of those recommended.[199] The cases reviewed by Justice MacDonald and the differences between his recommendations and the Indian Affairs Branch's decisions were discussed in a historical report prepared for the Commission,[200] but this issue had not been considered when the Inquiry was suspended.

JEAN BAPTISTE GAMBLER IR 183

The final addition to the Bigstone Cree Nation's land base was a 507.5-acre parcel of land at Calling Lake, set apart for the First Nation in 1966.[201] While advising that this reserve "belongs to Bigstone,"

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196 Order in Council PC 1944-3744, May 19, 1944, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 311).

197 Justice W.A. MacDonald to T.A. Crerar, Minister of Mines and Resources, August 7, 1944, DIAND, file 777/28-3, vol. 7, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 173).

198 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 173).

199 Minister of Mines and Resources, Ministerial Orders, April 17, 1945, DIAND, file 777/28-3, pt 7, Historical Documents from 1850–1989 (ICC Exhibit 20B, docs. 316-319). Minister of Mines and Resources, Ministerial Order, November 30, 1945, DIAND, file 777/28-3, pt 8, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 321).

200 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, pp. 35-48, and Appendices C, D, and E).

201 Order in Council PC 1966-2392, December 22, 1966, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 225).

elders confirmed that it had originally been established "for one family," that of Jean Baptiste Gambler.[202]

The daughters of Jean Baptiste Gambler advised the Commission that their father had been born at Lac La Biche,[203] and his father, Louison Matchemuttaw, was a signatory to Treaty 6 as a headman of the Peeyaysis (Lac La Biche) Band at Fort Pitt on September 9, 1876.[204] Jean Baptiste Gambler moved to Calling Lake at some point before the birth of most of his children,[205] and in fact probably before 1899. The Matchemuttaw/Gambler family was absent from Lac La Biche on a consistent basis as early as the 1880s,[206] and Peeyaysis Band annuity paylists indicate that the family was living within the boundaries of Treaty 8 as early as 1883.[207] In a statutory declaration sworn in 1915, Jean Baptiste Gambler indicated that he had wintered in the Calling Lake area since 1885.[208]

Members of the Matchemuttaw/Gambler family were virtually the only Peeyaysis Band members who did not discharge from treaty in order to apply for scrip in 1886, and in 1911 Louison Matchemuttaw and Jean Baptiste Gambler transferred to the Bigstone Cree Nation, becoming Numbers 104 and 105, respectively.[209] Both families were absent in 1913, the year in which reserves were first surveyed at Wabasca.[210]

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202 ICC Transcript, October 29, 1996, pp. 42-43 (Rita Auger).

203 ICC Transcript, July 3, 1997, p. 110 (Mary Jane Pichie).

204 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 26). Louison Matchemuttaw's position as a Peeyaysis likely explains the treaty medal that Jean Baptiste Gambler's daughters shared with the Commission at a community session on July 3, 1997. ICC Transcript, July 3, 1997, pp. 115-17 (Mary Jane Pichie).

205 The Commission heard evidence that Jean Baptiste Gambler had been married twice and had more than 20 children, 17 of whom were born to his second wife. All the children of the second marriage were born at Calling Lake. ICC Transcript, July 3, 1997, pp. 110, 118 (Mary Jane Pichie).

206 Referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 26).

207 Lac La Biche Band, Annuity Paylist, October 3, 1888, NA, RG 10, vol. 9421, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 7).

208 Jean Baptiste Gambler, Statutory Declaration, September 2, 1915, PAA, accession 74.32, file 3505385, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 80).

209 Bigstone's Band, Annuity Paylist, September 5, 1911, NA, RG 10, vol. 9446, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 47).

210 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 64).

In September 1915, Jean Baptiste Gambler applied for a free grant to a two-square-mile parcel of land at Calling Lake, claiming that he had been in possession of the land claimed and had made improvements on it prior to the signing of Treaty 8. Although the form of application made by him was that usually used in homestead applications, Jean Baptiste Gambler noted in his statutory declaration that, following consultations with the Treaty 8 inspector, he claimed the land in question as a "reserve" for his family.[211]

The Department of Indian Affairs supported Jean Baptiste Gambler's application; however, somewhat surprisingly in light of the fact that the application was made on behalf of the Gambler family, the department calculated the land to which the family was entitled under the reserve rather than the severalty provision of Treaty 8.[212] For reasons not expressed, Indian Affairs advised the Department of the Interior in January 1919 that the 11 members of the Gambler family[213] required a reserve of only one square mile.[214] When the parcel of land specified by Indian Affairs was surveyed, some of it was found to be under the waters of Calling Lake, and the Order in Council setting aside IR 183 in severalty for the Jean Baptiste Gambler family established the size of the reserve as 507.5 acres.[215]

Jean Baptiste Gambler lived on IR 183 until his death and, as his family grew (a 1939 census revealed that 24 Bigstone Cree Nation members lived on the reserve),[216] he made several

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211 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 80).

212 J.D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, to N.O. Coté, Controller, Land Patents Branch, Department of the Interior, May 2, 1916, DIAND, file 777/30-17-183 (ICC Exhibit 20B, doc. 287). Under Treaty 8, the size of reserves held in common is calculated on the basis of 128 acres per person and severalty lands are to be provided on the basis of 160 acres per person. Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 31).

213 N.O. Coté, Controller, Land Patents Branch, to H.B. Perrin, Dominion Lands Branch, Department of the Interior, April 22, 1918, PAA, accession 74.32, file 3505385, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 88).

214 J.D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, to N.O. Coté, Controller, Land Patents Branch, Department of the Interior, January 14, 1919, PAA, accession 74.32, file 3505385, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 89).

215 Privy Council Order PC 201897, April 29, 1919, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 90).

216 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 154).

unsuccessful applications for additional land.[217] In 1966, a decade after his death, the Bigstone Cree Nation passed a Band Council Resolution asking that IR183 be set aside for the First Nation.[218] The Superintendent of the Lesser Slave Lake Agency endorsed this suggestion, noting the long affiliation of Jean Baptiste Gambler with the Bigstone Cree Nation and the unanimous support of the Gambler descendants for the proposal.[219] Accordingly, an Order in Council passed on December 22, 1966, set aside the Jean Baptiste Gambler Reserve for the use and benefit of "the Wabasca (Bigstone) Band of Indians."[220]

Surviving children of Jean Baptiste Gambler remember the events of the 1960s somewhat differently. They advised the Commission that their father was affiliated with Bigstone only for the purpose of annuity payments, and they have no recollection of signing any papers consenting to the 1966 Order in Council.[221]

PERCEPTION OF CONTINUING SHORTFALL

Bigstone elders were consistent in their view that the survey of additional land at Wabasca in 1937 left a substantial amount of unfinished business regarding the treaty land entitlement of the Bigstone Cree Nation. According to Rita Auger, a surveyor was to return in 1938 to set aside additional land,[222] but this never took place. Louise Auger spoke of repeated requests for additional reserve land,[223] and Alphonse Auger told of one specific meeting at which Councillor Martin Beaver was

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217 ICC Transcript, July 3, 1997, pp. 118, 119 (Mary Jane Pichie).

218 Bigstone Band Council Resolution, February 2, 1966, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 223).

219 J.R. Wild, Superintendent, Lesser Slave Lake Agency, to Indian Affairs Branch, Department of Indian Affairs and Northern Development, October 29, 1965, DIAND, file 777/30-17-183, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 221).

220 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 225).

221 ICC Transcript, July 3, 1997, p. 113 (Mary Jane Pichie).

222 ICC Transcript, October 29, 1996, p. 57 (Rita Auger).

223 ICC Transcript, October 29, 1996, p. 56 (Louise Auger).

told by a government official that the Bigstone Cree Nation was entitled to an additional 20,000 acres of land.[224]

Documentary records indicate that for several decades, the view that the Bigstone Cree Nation was entitled to additional reserve land was shared by Indian Affairs officials. The 1937 survey included less than half the land to which federal officials had determined the First Nation was entitled.[225] In early 1949, recommendations that IR166C be extended by 14,000 acres were made by the assistant Indian agent resident in Wabasca[226] and the superintendent of the Lesser Slave Lake Agency,[227] and later the same year the former repeated his recommendation, suggesting at that time that 15,360 acres be added to IR166C.[228] In supporting the proposal, the regional supervisor of Indian Agencies expressed the hope that the survey could be included in the budget for the next fiscal year.[229]

The assistant Indian agent made an even more specific recommendation for a survey of additional land at Wabasca in 1953, when he forwarded to the superintendent of the Lesser Slave Lake Agency a sketch showing the addition of 24 sections (15,360 acres) to IR 166C.[230] The regional

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224 ICC Transcript, October 29, 1996, pp. 58-59 (Alphonse Auger).

225 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 138).

226 L. Basler, Assistant Indian Agent, Wabasca Reserve, to G.S. Lapp, Superintendent, Lesser Slave Lake Agency, Indian Affairs Branch, Department of Mines and Resources, February 10, 1949, DIAND, file 777/30-17, vol. 2, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 28).

227 G.S. Lapp, Superintendent, Lesser Slave Lake Agency, to G.H. Gooderham, Regional Supervisor of Indian Agencies, Indian Affairs Branch, Department of Mines and Resources, March 5, 1949, DIAND, file 777/30-17, vol. 2, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 28).

228 L. Basler, Assistant Indian Agent, Wabasca Reserve, to G.S. Lapp, Superintendent, Lesser Slave Lake Agency, Indian Affairs Branch, Department of Mines and Resources, September 7, 1949, DIAND, file 777/30-17, vol. 2, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 183).

229 G.H. Gooderham, Regional Supervisor of Indian Agencies, to D.J. Allen, Superintendent of Reserves and Trusts, Indian Affairs Branch, Department of Mines and Resources, September 28, 1949, DIAND, file 777/30-17, vol. 2, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 185).

230 James L. Ingram, Assistant Indian Agent, to G.S. Lapp, Superintendent, Lesser Slave Lake Agency, Indian Affairs Branch, Department of Citizenship and Immigration, January 9, 1953, DIAND, file 777/30-17, vol. 2, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 187). It is likely that the land that Assistant Agent Ingram suggested in 1953 (sections 1–24 of Township 82 range 1 west of the 5th meridian) was the same land that his predecessor, L. Basler, had recommended in September 1949. Historical Documents from 1850–1989 (ICC Exhibit 20B,

supervisor again endorsed the recommendation, referring to the 1937 conclusion that additional land was owed to the Bigstone Cree Nation after the completion of the survey in that year.[231]

In 1970 a regional official bypassed Ottawa and contacted the Alberta Department of Lands and Forests to advise that "it would appear that the Wabasca Band have [sic] a further land entitlement, the acreage of which is unknown."[232] Upon learning of this action, the regional official in question was advised by Ottawa that the question of how much, if any, land was still owing to the Bigstone Cree Nation was under review.[233] This review was not completed for several years, but in 1974, the Alberta Region was informed that a preliminary review suggested that the Bigstone Cree Nation had received all the land to which it was entitled under Treaty 8.[234] In reaching this conclusion, Indian Affairs officials calculated the First Nation's land entitlement at first survey based on its population in 1909, the year in which the first request for a reserve had been made.[235] The provision of additional land in 1937 was explained as a case in which reserve land was provided on an *ex gratia* basis to compensate for post-survey population growth, notwithstanding the fact that the First Nation's treaty land entitlement had already been satisfied.[236] Upon the completion of the

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doc. 183).

231 G.H. Gooderham, Regional Supervisor of Indian Agencies, to Director, Indian Affairs Branch, Department of Citizenship and Immigration, January 20, 1954, DIAND, file 777/30-17, vol. 2, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 192).

232 W.H. Thrall, Regional Land Administration Officer, Department of Indian Affairs and Northern Development – Alberta, to J. Paley, Timber Manager Branch, [Alberta] Department of Lands and Forests, November 27, 1970, DIAND, vol. 777/30-1, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 232).

233 H.R. Phillips, Acting Head, Land Titles Section, to W.H. Thrall, Regional Land Administration Officer, Department of Indian Affairs and Northern Development – Alberta, February 9, 1971, DIAND, file 777/30-1, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 234).

234 G.A. Poupore, Manager, Indian Lands, to W.H. Thrall, Regional Land Administrator, Alberta Region, Department of Indian and Northern Affairs, November 15, 1974, DIAND, file 777/30-17, vol. 2, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 245).

235 Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 46).

236 G.A. Poupore, Manager, Indian Lands, to W. Fox, Operations Branch, Department of Indian and Northern Affairs, February 6, 1975, DIAND, file 777/28-3, pt 6, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 30).

review begun in 1971, the then Minister of Indian Affairs advised Alberta that the Bigstone Cree Nation was one of the Alberta First Nations to which no additional reserve land was owed.[237]

Residents of the "isolated communities" experienced similar frustrations. Colin Trindle persisted, largely unaided, in his attempts to obtain a reserve at Peerless and Trout Lakes,[238] and elders who met with the Commission expressed regret that the residents of the communities had not paid more attention to this struggle.[239]

It is possible that efforts to obtain land in the "isolated communities" and the attempts by Jean Baptiste Gambler to expand the reserve at Calling Lake were unsuccessful in part because of a misunderstanding as to the permanence of these communities. In 1939, the inspector of Alberta Indian Agencies recommended that an additional 15,000 or even 30,000 acres be surveyed at Wabasca in anticipation of the time when "stragglers from Chipewyan Lake, Long Lake and Calling Lake" would move to Wabasca.[240]

In more recent years, attempts to secure reserves at Peerless and Trout Lakes ran afoul of the conclusion reached by Indian Affairs in the 1970s that the Bigstone Cree Nation had received all the land to which it was entitled under Treaty 8. In 1973, a Member of Parliament sought information from the Minister of Indian and Northern Affairs as to why the 1938 recommendation for reserves at Peerless and Trout Lakes had not resulted in the creation of reserves.[241] The Minister responded

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237 Judd Buchanan, Minister of Indian and Northern Affairs, to Lou Hyndman, [Alberta] Minister of Federal and Intergovernmental Affairs, June 20, 1975, DIAND, file 777/28-3, pt 6, referred to in Reddekopp Report, January 1997 (ICC Exhibit 33, p. 30).

238 Peerless Lake Presentation to Indian Affairs, "And We Need Land: A Statement of Grievances by the Cree People of Peerless Lake, Alberta," December 1985, interview with Colin Trindle (ICC Exhibit 2, pp. 54-56); ICC Transcript, July 3, 1997, p. 188 (Solomon Noskiye).

239 ICC Transcript, July 3, 1997, pp. 170, 174 (George Cardinal).

240 C. Pant Schmidt, Inspector of Indian Agencies, Alberta Inspectorate, to Secretary, Indian Affairs Branch, Department of Mines and Resources, August 16, 1939, NA, RG 10, vol. 7778, file 27131-17, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 155). Interestingly, the Inspector made this recommendation about the same time that he recommended the survey of reserves completely surrounding Long and Chipewyan Lakes. Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 61).

241 Paul Yewchuk, MP Athabasca, to Jean Chrétien, Minister of Indian and Northern Affairs, February 26, 1973, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 239).

that, although there had been some correspondence regarding the proposed reserve, there was no record of a commitment to provide it. Further, the Minister was satisfied that land set apart in the past "more than satisfies the [Bigstone] Band's entitlement," and that, accordingly, land could only be provided in the "isolated communities" if an equivalent amount of "surplus" land was surrendered at Wabasca.[242]

Witnesses meeting the Commission were of the view that there is no "surplus" reserve land at Wabasca, for the purposes of exchange or otherwise. Population growth, particularly as a result of the 1985 amendments to the *Indian Act*[243] known as "Bill C-31," have heightened the perception that the Bigstone Cree Nation has insufficient land for its current and future needs.[244] Louise Auger spoke of the increasing frustration felt by elders:

> I have been working with land claims here for how long. The way I felt, it seems like it was going forever and ever that we wouldn't get no answer, but I said to myself, if they are going to be taking their time, I am going to ask the Lord to leave me here for a while yet to help out to get the land that we want. We need land.[245]

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242 Jean Chrétien, Minister of Indian and Northern Affairs, to Paul Yewchuk, MP Athabasca, May 29, 1973, DIAND, file 777/30-1, Historical Documents from 1850–1989 (ICC Exhibit 20B, doc. 244).

243 SC 1985, c. 27.

244 ICC Transcript, October 29, 1996, pp. 46 and 128 (Louise Auger); ICC Transcript, October 29, 1996, p. 128 (Rita Auger); ICC Transcript, July 3, 1997, p. 130 (George Yellowknee).

245 ICC Transcript, October 29, 1996, p. 26 (Louise Auger).

PART III

ISSUES

The list of issues as agreed on by the parties, prior to the acceptance by Canada of the claim for negotiation, was as follows:

(1) Without prejudice to other positions of the Bigstone Cree Nation ("BCN") regarding the use of current population for the purposes of land entitlement pursuant to Treaty No. 8, and for the purposes of the present Inquiry in the context of reports of the Indian Claims Commission, which of the following approaches should be used in determining the TLE claim of the BCN?

- (i) Should 1913 be considered the "Date of First Survey"?
- (ii) Other Dates of First Survey or other criteria based on the particular historical and contemporary facts and circumstances of the BCN;
- (iii) Should there considered to be separate Dates of First Survey for each geographically isolated community of the BCN;

(2) What categories of individuals are entitled to be counted for treaty land entitlement purposes?

- (i) Those people contemplated by the 1983 ONC Guidelines and other similar criteria including absentees, late and new adherents, landless transferees, and non-treaty Indian women marrying in?
- (ii) Individuals struck from the paylists as a result of the McCrimmon/McKeen inquiries, in particular:
  - (a) Individuals struck from the paylist as a result of the inquiries but not reinstated notwithstanding that they were recommended for reinstatement by Mr. Justice MacDonald;
  - (b) Individuals struck from the paylist as a result of the inquiries and not recommended for reinstatement by Mr. Justice MacDonald?
- (iii) Individuals who are identified as being part of the Bigstone Cree Nation as at the appropriate date of calculation but are not included at that time or subsequently in the BCN Treaty Paylists?

(3) Applying the principles of treaty land entitlement described above in the context of the particular historical and contemporary facts and circumstances of the BCN, does Canada owe additional land to the BCN pursuant to Treaty No. 8?

(4) Has Canada breached any fiduciary, legal, equitable or other obligation or duties to the BCN in the implementation of its obligations to provide the land entitlement of the BCN under

Treaty No. 8? In particular, have these breaches, if any, been a result of the arguments or facts raised in the following subsections of the "Supplementary Brief submitted to the Department of Justice with respect various matters relating to the TLE claim of the Bigstone Cree Band of December 14, 1995":

> "5.1 It is relevant to the work being carried-out by the Department of Justice that the fiduciary obligations of the Crown as regards the implementation of Treaty obligations be at the forefront of any review.
>
> 5.2 This is of greatest importance in regard to the unilateral change in policies of Government exemplified by the unilateral amendments to the 1983 Guidelines and, of more relevance, the level of reliance and expectations put forward by the letter from former Assistant Deputy Minister Richard Van Loon.
>
> 5.3 The obligations of the Crown to meet its obligations under Treaty are constitutionally protected under the *Constitution Act, 1982* and are confirmed by the Courts as being fiduciary obligations which must be respected.
>
> 5.4 The analysis put forward by the Indian Claims Commission in regard to the *Fort McKay Report* is directly applicable to this situation and Bigstone accepts and supports the analysis with respect to the change in Guidelines from the 1983 version to 1993.
>
> 5.5 It further makes the point that in regard to the specific situation as regards Bigstone, the signature of the Memorandum of Intent in 1993 (Annex A) by Canada at the same time as it was both changing the criteria for Entitlement and had put forward the letter from then acting Assistant Deputy Minister Richard Van Loon, further brings into doubt the fiduciary obligations of the Crown and raises additional questions which support the proposition that the 1983 ONC Guidelines in fact should apply."

PART IV

CONCLUSION

On October 13, 1998, the Minister of Indian Affairs and Northern Development informed the Chief of the Bigstone Cree Nation that the federal government had accepted the Bigstone treaty land entitlement claim for negotiation, on the basis that there was a TLE shortfall. This acceptance was a result of the new TLE policy, which was approved by Cabinet in April 1998; that policy was in part the result of the Commission's recommendations in its report on the treaty land entitlement claim of the Fort McKay First Nation.[246]

Accordingly, the Commission has suspended its inquiry and wishes the parties well in their negotiations towards a settlement. The Commission remains ready to assist the parties, should its services be required in the negotiations.

FOR THE INDIAN CLAIMS COMMISSION

Daniel J. Bellegarde	P.E. James Prentice, QC	Carole T. Corcoran
Commission Co-Chair	Commission Co-Chair	Commissioner

Dated this 20th day of March, 2000

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246 Indian Claims Commission, *Inquiry into the Treaty Land Entitlement Claim of the Fort McKay First Nation* (Ottawa, December 1995), reported (1996) 5 ICCP 3.

APPENDIX A

DIAND, PRESS RELEASE, APRIL 30, 1998

CANADA BROADENS APPROACH TO HISTORIC TREATY LAND ENTITLEMENTS

OTTAWA (April 30, 1998) -- Jane Stewart, Minister of Indian Affairs and Northern Development, announced today that Canada has broadened the way it calculates historic Treaty Land Entitlement (TLE) shortfalls. The move comes in response to recommendations made by the Indian Claims Commission (ICC).

The new approach to TLEs is consistent with the government's commitment to improve the specific claims process. "Negotiated TLE settlements provide land and capital to enable First Nations to launch economic development initiatives that strengthen their economies and their communities," said Minister Stewart. "As we recently committed to in *Gathering Strength -- Canada's Aboriginal Action Plan*, this is a positive step toward reconciliation in our relationship with First Nations."

The treaties between Aboriginal people and the Crown were vehicles for arranging the basis of the relationship between them. The importance of treaties is confirmed by the recognition of treaty rights, both historical and modern, and Aboriginal title in the *Constitution Act, 1982*. When the numbered treaties were negotiated in the nineteenth and twentieth centuries, the terms of treaties stipulated that the Crown would provide a certain amount of land per person. An Indian band has a TLE shortfall when it has not received all land it may be entitled to under an historic treaty.

While Treaties 1 to 11 include specific references to the amount of land owed per person, there is less clarity about the population to be counted and when. At the time of reserve creation, band populations were in flux. Some bands increased in population after the colonial governments had done its first population count as new people joined for the first time or moved in from other bands.

When calculations were done, in some cases, bands were found to have a shortfall of land. Previously, historic shortfall entitlements were based on the original band population count. The new approach will ensure TLEs will no longer be based solely on the government's original band population count but will include people who joined bands shortly afterwards and were not counted under any other treaty settlement. Counting these "late additions" more fairly reflects the dynamic of band populations of the time.

The new approach was prompted by the Indian Claims Commission's (ICC) review of the Fort McKay and Kawacatoose TLE claims after both were rejected by Canada. This approach reflects one of the main ICC recommendations to count "late additions" in TLE claims. It will enable Canada to accept these two First Nations claims for negotiation.

The ICC, created in 1991, is mandated under the federal *Inquiries Act* to review specific claims rejected by Canada and make recommendations.

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APPENDIX B

BIGSTONE CREE NATION TREATY LAND ENTITLEMENT INQUIRY

1 Planning conference — July 25, 1996

2 Community sessions

The Commission held three community sessions.

1st community session: Desmarais on October 29, 1996 heard from Chief Mel Beaver, Alphonse Auger, Louise Auger, Daniel Beaver, Rita Auger, Tommy Auger, and Veronique Gladu.

Trout Lake on October 30, 1996, heard from Harry Houle, Solomon Noskiye, Johnny Noskiy, Peter Letendre and Johnny Ossimeemas.

2nd community session: Desmarais, July 3, 1997, heard from Alphonse Auger, Tommy Auger, George A. Yellowknee, Elzear O'rr, Arnold O'rr, Louise Yellowknee, Rita Auger, Mary Jane Pichie, Freddie Gambler, Margaret Gambler, Agatha Gambler, Barbara Nenamahoo.

3rd community session: Peerless Lake, December 9, 1997, heard from Felix Noskiye, Louis Cardinal, George Cardinal, Solomon Noskiye, George Noskiye, Peter Letendre, Emil Burnttail, Wilfred Cardinal, Victor Cardinal.

3 Prehearing conference — January 22, 1997

February 17, 1997

4 Content of formal record

The formal record for the Bigstone Cree Nation Treaty Land Entitlement Inquiry consists of the following materials:

- 46 exhibits tendered during the inquiry
- transcript of Community sessions

The report of the Commission and letters of transmittal to the parties will complete the formal record of this inquiry.